

**ASSEMBLY BILL**

**No. 523**

**Introduced by Assembly Member Negrete McLeod**

February 16, 2005

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An act to amend Sections 94854 and 94920 of the Education Code, relating to private postsecondary education.

LEGISLATIVE COUNSEL'S DIGEST

AB 523, as introduced, Negrete McLeod. Private postsecondary institutions: instructors and standards.

(1) Existing law, the Private Postsecondary and Vocational Education Reform Act of 1989, generally sets minimum standards of instructional quality, ethical and business practices, health and safety, and fiscal responsibility for private postsecondary and vocational educational institutions, as defined. The act establishes the Bureau for Private Postsecondary and Vocational Education, which, among other things, is required to review and investigate all institutions, programs, and courses of instruction approved under the act. By its own terms, the act is repealed as of January 1, 2008.

An existing provision of the act requires that, in determining the placement rate of an institution for a particular time period, an institution may count a student who drops out of the program after completing at least 75% of the program because the student has obtained employment that lasts for a period of 60 days in the occupations to which the program of instruction is represented to lead.

This bill would instead require that the institution could count a student who drops out of the program after completing at least 75% of the program because the student has obtained employment in an occupation included in the Standard Occupational Classifications

system that is used on January 1, 2006, by the Bureau of Labor Statistics of the United States Department of Labor.

(2) An existing provision of the act relating to persons who are qualified to serve as directors of institutions that are under the jurisdiction of the act provides that the sole owner of an institution may serve in the capacity of director for 3 years prior to meeting a requirement that a director have 3 years' experience in an administrative position in a public or state-approved private postsecondary school.

This bill would specify that this provision refers to a sole owner, that term is used in the Corporations Code.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 94854 of the Education Code is  
2 amended to read:

3 94854. (a) Every institution shall meet all of the following  
4 performance standards for each program offered during the  
5 applicable time period described in subdivision (1):

6 (1) Sixty percent or more of the students who began the  
7 program, did not cancel pursuant to Section 94867, and were  
8 originally scheduled at the time of enrollment to complete the  
9 course during that period, shall complete it.

10 (2) Seventy percent or more of the students who completed the  
11 program within that period shall obtain employment starting  
12 within six months after completing the course in the occupations  
13 or job titles to which the course of instruction was represented to  
14 lead. For the purpose of this subdivision, "program" or "program  
15 of instruction" or "course" or "course of instruction" includes all  
16 courses of instruction, however denominated, that are represented  
17 to lead to the same or closely related occupations or job titles.

18 (b) Every institution shall meet all of the following  
19 performance standards for all programs in the aggregate offered  
20 by the institution at each of its campuses during the applicable  
21 time period described in subdivision (1):

22 (1) Sixty percent or more of all the students who began the  
23 programs did not cancel pursuant to Section 94867, and were

1 originally scheduled at the time of enrollment to complete these  
2 programs during that time period, shall complete these programs.

3 (2) Seventy percent or more of all the students who completed  
4 the programs within that time period shall obtain employment,  
5 starting within six months after completing the programs, in the  
6 occupations or job titles to which the programs of instruction  
7 were represented to lead.

8 (c) For the purposes of subdivisions (a) and (b), students who,  
9 as documented by the institution, have been prevented from  
10 completing the program or programs of instruction due to death,  
11 disability, illness, pregnancy, military service, or participation in  
12 the Peace Corps or Domestic Volunteer Service shall be excluded  
13 from the computations used to determine whether an institution  
14 has met the performance standards prescribed by those  
15 subdivisions. Except as provided in Section 94874, an institution  
16 shall not disclose the records maintained pursuant to this  
17 subdivision unless production of those records are required by  
18 any law, subpoena, or court order, or are necessary for a certified  
19 public accountant to prepare a compliance report pursuant to  
20 subdivision (g) of Section 94870.

21 (d) An institution shall meet the standards prescribed in  
22 subdivisions (a) and (b) at each site at which the program or  
23 programs are offered. A determination of whether a particular  
24 site meets the standards prescribed in subdivisions (a) and (b)  
25 shall be based only on students who attended that site. An  
26 institution shall be subject to subdivisions (f) and (g) only with  
27 respect to its sites that fail to meet the standards prescribed in  
28 subdivisions (a) and (b).

29 (e) (1) This subdivision applies only to institutions in which  
30 15 or fewer students began a program or programs, did not  
31 cancel pursuant to Section 94867, and were originally scheduled  
32 to complete the program or programs within the applicable time  
33 period described in subdivision (l).

34 (2) If an institution described in paragraph (1) fails to meet  
35 any of the standards prescribed in subdivision (a) or (b), but  
36 would have met that standard if one additional student had  
37 completed or obtained employment, the institution shall be  
38 deemed to comply with this section. If an institution described in  
39 paragraph (1) fails to meet the standard for review established in  
40 subdivision (f), but would have met the standard if one additional

1 student had completed or obtained employment, the institution  
2 shall be deemed subject to subdivision (f).

3 (f) (1) This subdivision applies only to an institution or any  
4 site that fails to meet any of the following:

5 (A) Any of the standards established in subdivision (a) or (b)  
6 by 10 percent or less.

7 (B) Any of the standards established in subdivision (a), but has  
8 a placement rate of 42 percent or more for the course in which  
9 the standard was failed.

10 (C) Any of the standards established in subdivision (b), but  
11 has a placement rate of 42 percent or more for all courses in the  
12 aggregate.

13 (2) If the institution's failure to meet the standards prescribed  
14 in subdivision (a) or (b) was not caused by a violation of this  
15 chapter, the council shall order, after notice and, if requested,  
16 after a hearing, that the institution implement a program to  
17 achieve compliance with subdivisions (a) and (b). The program  
18 may include any of the following:

19 (A) Limitations on enrollment for specific courses of  
20 instruction.

21 (B) Revision of admission policies and screening practices to  
22 ensure that students have a reasonable expectation of completing  
23 courses and obtaining employment.

24 (C) Increased academic counseling and other student support  
25 services.

26 (D) Improved curricula, facilities, and equipment.

27 (E) Revisions to the qualifications and number of faculty.

28 (F) Improved job placement services, including revisions to  
29 the qualifications and number of job placement personnel and the  
30 expansion of contacts with employees and state and federal  
31 employment development agencies.

32 (G) Submission of a compliance report prepared by a certified  
33 public accountant, who is not an officer, director, shareholder, or  
34 employee of the institution, any parent corporation or any  
35 subsidiary, prepared pursuant to an attestation engagement in  
36 accordance with the Statements on Standards for Attestation  
37 Engagements of the American Institute of Certified Public  
38 Accounts, which states that the institution has complied with the  
39 performance standards in this section within the period set forth  
40 in paragraph (4).

1 (H) Any other reasonable procedure required by the ~~council~~  
2 *bureau*.

3 (3) If an institution is subject to an order pursuant to paragraph  
4 (2), the ~~council bureau~~ may require that the institution file  
5 information or reports requested by the ~~council bureau~~. The  
6 ~~council bureau~~ may also monitor the institution in the manner  
7 provided in subdivision (d) of Section 94878.

8 (4) (A) An institution subject to an order pursuant to  
9 paragraph (2) shall satisfy the standards established in  
10 subdivisions (a) and (b) within the period designated by the  
11 ~~council bureau~~. This period shall not extend more than one year  
12 beyond the length of the program for noncompliance with the  
13 standards prescribed by subdivision (a) or more than one year  
14 beyond the longest program for noncompliance with the  
15 standards prescribed in subdivision (b).

16 (B) If the institution fails to satisfy the standards of  
17 subdivision (a) within the period designated by the ~~council~~  
18 *bureau*, the ~~council bureau~~ shall order the institution to cease  
19 offering the course of instruction at the campus where that  
20 program was offered. If the institution fails to satisfy the  
21 standards of subdivision (b) within the period designated by the  
22 ~~council bureau~~, the ~~council bureau~~ shall revoke the institution's  
23 approval to operate, or approval to operate the branch or satellite  
24 campus where the programs were offered. No action shall be  
25 taken pursuant to this paragraph without notice, and, if requested  
26 by the institution, a hearing. In taking action pursuant to this  
27 subparagraph, the bureau shall consider the impact, if any, of  
28 changes in the employment rate in the area served by this  
29 institution.

30 (g) If an institution fails to meet any of the standards  
31 established in subdivision (a) and does not have a placement rate  
32 of 42 percent or more for the program in which the standard was  
33 failed, the ~~council bureau~~ shall order the institution to cease  
34 offering the program of instruction at the campus where the  
35 course was offered. If the institution fails to meet any of the  
36 standards prescribed in subdivision (b) and does not have a  
37 placement rate of 42 percent or more for all programs in the  
38 aggregate, the ~~council bureau~~ shall revoke the institution's  
39 approval to operate, or approval to operate the branch or satellite  
40 campus where the programs were offered. No action shall be

1 taken pursuant to this subdivision without notice and, if  
2 requested by the institution, a hearing.

3 (h) (1) The institution shall have the burden of proving its  
4 compliance with this section.

5 (2) The ~~council~~ *bureau* shall investigate the institution  
6 whenever the ~~council~~ *bureau* deems appropriate to verify the  
7 institution's compliance with this section. The investigation shall  
8 include an examination of the records maintained by the  
9 institution pursuant to subdivision (j) and contacts with the  
10 students and employers.

11 (3) If an institution willfully falsifies, alters, destroys,  
12 conceals, or provides untrue or misleading information relating to  
13 compliance with this section, including records maintained  
14 pursuant to subdivision (j), the ~~council~~ *bureau* shall revoke the  
15 institution's approval to operate. No action shall be taken  
16 pursuant to this paragraph without notice and, if requested by the  
17 institution, a hearing. This provision supplements, but does not  
18 supplant, any other penalty or remedy provided by law.

19 (4) The institution shall pay all reasonable costs and expenses  
20 incurred by the ~~council~~ *bureau* in connection with this section at  
21 a time designated by the ~~council~~ *bureau*.

22 (i) If the ~~council~~ *bureau*, pursuant to subdivision (f) or (g),  
23 orders an institution to cease offering a program of instruction or  
24 revokes the approval of an institution to operate or operate a  
25 branch or satellite campus, the institution may apply, no sooner  
26 than two years after the order to cease or the revocation became  
27 effective, for approval to offer that program or for approval to  
28 operate. Before the ~~council~~ *bureau* may grant any approval, the  
29 institution shall establish that it complies with this chapter, each  
30 program satisfies all of the minimum standards prescribed by this  
31 chapter, and the circumstances surrounding the institution's  
32 failure to meet the requirements of this section have sufficiently  
33 changed so that the institution will be substantially likely to  
34 comply with this section.

35 (j) An institution shall maintain records of the name, address,  
36 and telephone number of students who enroll in a program of  
37 instruction, including students who begin the program and  
38 students who cancel pursuant to Section 94867, and of students  
39 who graduate from that program of instruction. An institution  
40 shall inquire whether students who complete a program of

instruction obtain employment starting within six months of completing the program in the occupation to which the program of instruction is represented to lead and continue in employment for a period of at least 60 days. The inquiry shall be documented by a list indicating each student's name, address, and telephone number; the employer's name, address, and telephone number; the name, address, and telephone number of the person who provided the information regarding the student's employment to the institution; the name, title, or description of the job; the date the student obtained employment; the duration of the student's employment; information concerning whether the student was employed full-time or part-time including the number of hours worked per week; and the names, addresses, and telephone numbers of students who choose not to seek employment and instead enroll in another program to earn a higher degree, as well as the name and address of the institution in which they enroll. If the student is self-employed, the list shall include reliable indices of self-employment such as contracts, checks for payment, tax returns, social security contribution records, records of accounts receivable or customer payments, invoices for business supplies, rent receipts, appointment book entries, business license, or any other information required by the bureau that is a reliable indicator of self-employment.

(k) For the purposes of this section, the following definitions shall apply:

(1) "Annual report" means the report required to be filed pursuant to Section 94861.

(2) (A) "Employment" means either of the following:

(i) Full-time employment for at least 32 hours per week for a period of at least 60 days in the occupations or job titles to which the program of instruction is represented to lead.

(ii) Part-time employment for at least 17.5 hours, but less than 32 hours, per week for a period of at least 60 days in the occupations or job titles to which the program of instruction is represented to lead, provided the student completes a handwritten statement at the beginning of the program and at the end of the program which states that the student's educational objective is part-time employment. The institution shall not require that any student complete ~~such~~ a statement or provide any incentive,

1 financial or otherwise, to any student for signing ~~such a~~ *that*  
2 statement.

3 (B) The bureau shall adopt regulations to specify the job tasks,  
4 other than those directly related to generating income, which may  
5 be counted towards meeting the hour requirements for full-time  
6 and part-time employment for students who are self employed.

7 (3) "Hearing" means a hearing pursuant to the requirements of  
8 either Section 94965 or 94975.

9 (4) "Placement rate" means the percentage of students who  
10 fulfilled the provisions of the following two subparagraphs:

11 (A) Began the program, did not cancel pursuant to Section  
12 94867, and were originally scheduled at the time of enrollment to  
13 complete the program during the applicable time period  
14 described in subdivision (I).

15 (B) Completed the program, within the applicable time period  
16 described in subdivision (I) and started employment within six  
17 months of completing the program or, if employment requires  
18 taking a state licensure examination for which only graduates of  
19 the program may apply, then (i) started employment within six  
20 months of the date on which the state licensing agency  
21 announces the results of the first licensure examination  
22 reasonably available to students who completed the program, or  
23 (ii) started employment within six months of the next reasonably  
24 available licensure examination date for any student who did not  
25 receive passing results on the first exam. The time period  
26 determined pursuant to this subparagraph shall not exceed 10  
27 months beyond the date of completion of the program of  
28 instruction. The institution shall retain a record of the date of the  
29 first reasonably available licensure exam following the  
30 completion date of each student, the date the licensure agency  
31 announces the results of the first reasonably available licensure  
32 exam, and the date of the next reasonably available licensure  
33 exam for each student who did not pass the first exam.

34 (5) "Reporting period" means the institution's fiscal year or  
35 any year period designated by the ~~council~~ *bureau* to be covered  
36 in the institution's annual report.

37 (6) "Time period" means the two most recent calendar years  
38 that ended at least eight months before the end of the institution's  
39 applicable reporting period.



1 (l) (1) An institution's compliance with the standards  
2 prescribed in subdivisions (a) and (b) shall be determined as of  
3 the date on which the institution's reporting period ends.

4 (2) The institution shall report its determination of its  
5 compliance with the standards established in subdivisions (a) and  
6 (b) in each annual report.

7 (3) The ~~council~~ bureau may adjust the meaning of "time  
8 period" if the ~~council~~ bureau finds that an adjustment is  
9 necessary for the efficient administration of this section. If any  
10 adjustment is made in the annual reporting periods, the ~~council~~  
11 bureau may adjust when the time period commences but shall  
12 not alter the two-year length of the period.

13 (m) In determining the placement rate for a particular time  
14 period as described in subdivision (l), an institution may exclude  
15 from the determination a student whose completion date was  
16 extended beyond that time period if the extension was requested  
17 by the student in writing on an enrollment agreement  
18 modification request form that meets specifications established  
19 by the ~~council~~ bureau. The form shall include instructions to the  
20 student indicating that, when signed by both the student and the  
21 institution, the request modifies the existing agreement. The form  
22 shall not be valid unless it provides space for the student to  
23 complete a handwritten description, in the student's handwriting,  
24 of the reasons necessitating the extension that are distinctly  
25 personal to the student and unrelated to the provision of  
26 educational services or activities of the institution, contains the  
27 new expected completion date of the program, and is signed and  
28 dated by the student and the institution. The institution shall  
29 provide the student a copy of the signed modification request  
30 form. The institution shall retain the student's original written  
31 request to modify the enrollment agreement with the original  
32 enrollment agreement. A student excluded from the placement  
33 rate determination for a particular time period pursuant to this  
34 subdivision shall be included in the placement rate determination  
35 for the next immediately following time period. The institution  
36 shall state in the institution's annual report the number of  
37 students for whom an extension was granted.

38 (n) In determining the placement rate for a particular time  
39 period as described in subdivision (l), an institution may exclude  
40 from the calculation a student who either:

1 (1) Decides not to obtain employment and within six months  
2 of completing the program enrolls in a program to continue his or  
3 her education to obtain a higher level degree that is related to, or  
4 provides for the student to use, the same skills or knowledge  
5 obtained in the program the student completed.

6 (2) Is in possession at the completion of the program of a valid  
7 United States Immigration and Naturalization Service Form I-20.

8 (o) In determining the placement rate for a particular time  
9 period as described in subdivision (l), an institution may count a  
10 student who drops out of the program after completing at least 75  
11 percent of the program because the student has obtained  
12 employment which lasts for a period of at least 60 days in ~~the~~  
13 ~~occupations or job titles~~ *an occupation included in a minor group*  
14 *of the Standard Occupational Classification system that is used*  
15 *by the Bureau of Labor Statistics of the United States*  
16 *Department of Labor on January 1, 2006*, to which the program  
17 of instruction is represented to lead. No more than 10 percent of  
18 the institution's total number of placed students may be counted  
19 pursuant to this subdivision.

20 (p) If an order to cease offering a program or a revocation is  
21 issued pursuant to this section, ~~the council~~ *bureau* may permit the  
22 institution to continue to offer the program or programs of  
23 instruction to the students who had begun the course or courses  
24 before the effective date of the order or revocation or may order  
25 the institution to cease instruction and provide a refund of tuition  
26 and all other charges to students.

27 SEC. 2. Section 94920 of the Education Code is amended to  
28 read:

29 94920. (a) Each individual submitting an application for a  
30 certificate of authorization for service, pursuant to paragraph (3)  
31 of subdivision (b) of Section 94915, shall provide ~~the council~~  
32 *bureau* with the following information:

33 (1) A completed application as supplied by ~~the council~~ *bureau*.

34 (2) Certified copies of educational transcripts, where  
35 applicable.

36 (3) Verified employment history.

37 (4) Other documentation of prior experience or education as  
38 required by ~~the council~~ *bureau* for verification.

39 (b) To be eligible for a certificate of authorization for service,  
40 the applicant shall fulfill the following requirements:

1 (1) Instructors shall have all of the following qualifications:

2 (A) No record of any violations of this chapter.

3 (B) Verification that he or she possesses a combination of at  
4 least three years' experience and training or education in the  
5 occupation or job title category for which the certification is  
6 sought.

7 (C) An instructor for a program that leads to a degree shall  
8 possess a degree of equal or higher level in the occupation for  
9 which certification is sought.

10 (2) Directors shall have both of the following qualifications:

11 (A) Three years' experience in an administrative position in a  
12 public or an approved private postsecondary school.

13 (B) No record of any violations of this chapter.

14 (3) Associate directors shall have both of the following  
15 qualifications:

16 (A) Two years' experience in an administrative or other  
17 responsible position in a public or state approved private  
18 postsecondary school.

19 (B) No record of any violations of this chapter.

20 (4) Financial aid directors shall have all of the following  
21 qualifications:

22 (A) Five years' experience in an administrative position in the  
23 financial aid office of a public or approved private postsecondary  
24 school.

25 (B) Verification of completion within the previous two years  
26 of a training seminar or workshop certified by the Student Aid  
27 Commission as providing up-to-date comprehensive information  
28 on financial aid programs and policies.

29 (C) No record of any violations of this chapter.

30 (D) Any other requirements the ~~council~~ bureau deems  
31 necessary.

32 (5) Financial aid officers shall possess all of the following  
33 qualifications:

34 (A) Verification of completion within the previous two years  
35 of a training seminar or workshop certified by the Student Aid  
36 Commission as providing up-to-date comprehensive information  
37 on financial aid programs and policies.

38 (B) No record of any violations of this chapter.

39 (C) Other requirements the ~~council~~ bureau deems necessary.

1     (c) ~~An individual who is the~~*The sole owner, as that term is*  
2     *used in the Corporations Code*, of an institution may serve in the  
3     capacity of director for three years prior to meeting the  
4     qualifications of subparagraph (A) of paragraph (2) of  
5     subdivision (b).

6     (d) Any individual filling a position left vacant by a previously  
7     certified financial aid director or financial aid officer shall verify  
8     with the ~~council~~ *bureau* completion of the training referred to in  
9     subparagraph (A) of paragraph (5) of subdivision (b) within one  
10    year of accepting that position.

11    (e) Each individual certified for authorization for service in the  
12    positions listed in paragraphs (1), (4), and (5) of subdivision (b)  
13    shall maintain at each private postsecondary educational  
14    institution where he or she is employed a validated transcript  
15    evidencing the successful completion of three continuing  
16    education units of recognized in-service training in their  
17    education, job title category, or employment field during every  
18    period of certification. These units may be completed through  
19    in-service training offered by accrediting associations,  
20    professional organizations, or council-approved programs.

21    (f) Every certificate of authorization issued to a person who  
22    possesses the qualifications described in paragraphs (1), (4), and  
23    (5) of subdivision (b) shall be valid for a period of three years.

24    (g) In addition to the requirements set forth in this section, the  
25    ~~council~~ *bureau* may impose additional requirements by  
26    regulation.